



Billing Code: 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-201-820

Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On February 1, 2018, the Department of Commerce (Commerce) initiated the fourth sunset review of the suspended antidumping duty investigation on fresh tomatoes from Mexico. Commerce preliminarily finds that termination of the suspended antidumping duty investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of dumping at the levels indicated in the “Preliminary Results of Review” section of this notice.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: David Cordell or Sally C. Gannon, Bilateral Agreements Unit, Office of Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC, 20230; telephone: 202-482-0408 or 202-482-0162, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On March 8, 2013, the Department of Commerce (the Department) published a notice of suspension of the antidumping duty investigation on fresh tomatoes from Mexico. The basis for

the suspension of the investigation was an agreement between Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico wherein each signatory producer/exporter agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States (2013 Suspension Agreement on Fresh Tomatoes from Mexico (Suspension Agreement)).<sup>1</sup>

On February 1, 2018, Commerce initiated the sunset review of the suspended antidumping duty investigation on fresh tomatoes from Mexico in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> Commerce received a notice of intent to participate in this sunset review from the Florida Tomato Exchange (FTE) on February 15, 2018, within the applicable deadline specified in 19 CFR 351.218(d)(1)(i). The FTE claimed interested-party status under section 771(9)(E) of the Act as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.

On March 1, 2018, Commerce received a request from NatureSweet Ltd. and its affiliates (collectively, NatureSweet) for a one-week extension to the deadline prescribed in 19 CFR 351.218(d)(3) for submitting its substantive response. On March 5, 2018, Commerce granted NatureSweet's extension request, in accordance with 19 CFR 351.302(b), and extended the deadline for substantives responses from all interested parties to March 12, 2018. On March 12, 2018, Commerce received complete substantive responses from NatureSweet, the FTE, and Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate (collectively,

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<sup>1</sup> See *Fresh Tomatoes from Mexico: Suspension of Antidumping Investigation*, 78 FR 14967 (March 8, 2013).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Review*, 83 FR 4641 (February 1, 2018) (*Initiation*).

CAADES *et al.* or the Mexican growers).<sup>3</sup> Both NatureSweet and CAADES *et al.* claimed interested-party status under section 771(9)(A) of the Act as a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise. On April 2, 2018, Commerce received rebuttal comments from the FTE and the Mexican growers within the deadline specified in 19 CFR 351.218(d)(4).<sup>4</sup>

On April 13, 2018, Commerce determined in accordance with 19 CFR 351.218(e)(1)(ii) that NatureSweet's and the Mexican signatories' substantive responses met the requirements of 19 CFR 351.218(d)(3) and thus constituted adequate responses to the notice of initiation. Further, we found in accordance with 19 CFR 351.218(e)(1)(i) that the domestic interested parties submitted an adequate response to the notice of initiation. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(2)(i), Commerce began conducting a full sunset review of the suspended investigation on fresh tomatoes from Mexico and notified the ITC of its intent to conduct a full sunset review.<sup>5</sup>

#### Scope of the Suspension Agreement

The merchandise subject to the suspension agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspension agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.*, tomatoes used in the

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<sup>3</sup> See Letters from NatureSweet, FTE, and Mexican growers, dated March 12, 2018.

<sup>4</sup> See Letters from the FTE and the Mexican Growers dated April 2, 2018.

<sup>5</sup> See Letter from James C. Doyle to Michael Anderson entitled "Sunset Reviews Initiated on February 1, 2018" (April 13, 2018).

preparation of fresh salsa or salad bars), are covered by this suspension agreement.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this Suspension Agreement.

Tomatoes imported from Mexico covered by this suspension agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Analysis of Comments Received

All issues raised for the preliminary results of this sunset review are addressed in the Preliminary Decision Memorandum.<sup>6</sup> The Preliminary Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov> and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/>. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

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<sup>6</sup> See Memorandum from Sally C. Gannon to Gary Taverman, entitled "Preliminary Decision Memorandum for the Fourth Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico" (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by this notice.

### Preliminary Results of Review

Pursuant to section 752(c) of the Act, we determine that termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of dumping at weighted-average margins up to 188.14 percent.

Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined. Commerce will issue a notice of final results of this full sunset review, which will include the results of its analysis of issues raised in any such comments, no later than October 1, 2018.

This five-year (sunset) review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(f)(1).

Dated: August 21, 2018

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

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